

# HOUSE BILL No. 1883

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-13-2-14.7; IC 5-2-5-5; IC 12-24-3-2; IC 20-6.1-4; IC 22-5-5-1; IC 31-19-9-10; IC 33-14-1-8; IC 33-19-6-12; IC 34-24-1-1; IC 35-42-1-1; IC 35-47-4-5; IC 35-50.

**Synopsis:** Sexual misconduct with a minor. Adds references to the crime of sexual misconduct with a minor to various statutes dealing with sex crimes.

**Effective:** July 1, 2001.

## Pelath

January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1883

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-13-2-14.7 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.7. A person  
3 employed, appointed, or under contract with a state agency, who works  
4 with or around children, shall be dismissed (after the appropriate  
5 pre-deprivation procedure has occurred) if that person is, or has ever  
6 been, convicted of any of the following:
- 7 (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
  - 8 years of age.
  - 9 (2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less
  - 10 than eighteen (18) years of age.
  - 11 (3) Child molesting (IC 35-42-4-3).
  - 12 (4) Child exploitation (IC 35-42-4-4(b)).
  - 13 (5) Vicarious sexual gratification (IC 35-42-4-5).
  - 14 (6) Child solicitation (IC 35-42-4-6).
  - 15 (7) Child seduction (IC 35-42-4-7).
  - 16 (8) **Sexual misconduct with a minor (IC 35-42-4-9).**
  - 17 (9) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)



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years of age.

SECTION 2. IC 5-2-5-5, AS AMENDED BY P.L.10-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) Except as provided in subsection (b), on request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has applied for a license and criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that his rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;
- (10) is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;
- (11) is being sought by the parent locator service of the child support bureau of the division of family and children; or
- (12) has been convicted of any of the following:
  - (A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
  - (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
  - (C) Child molesting (IC 35-42-4-3).
  - (D) Child exploitation (IC 35-42-4-4(b)).
  - (E) Possession of child pornography (IC 35-42-4-4(c)).
  - (F) Vicarious sexual gratification (IC 35-42-4-5).
  - (G) Child solicitation (IC 35-42-4-6).

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(H) Child seduction (IC 35-42-4-7).

(I) **Sexual misconduct with a minor (IC 35-42-4-9).**

(J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:

(1) Federally chartered or insured banking institutions.

(2) Officials of state and local government for the purpose of employment and licensing.

(3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 3. IC 12-24-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. To provide greater security for patients, visitors, and employees, the division may not employ in a state institution an individual who has been convicted of any of the following offenses:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

(3) Child molesting (IC 35-42-4-3).

(4) Child exploitation (IC 35-42-4-4).

(5) **Sexual misconduct with a minor (IC 35-42-4-9).**

SECTION 4. IC 20-6.1-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. Cancellation of Indefinite Contract by School Corporation Grounds. (a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 of this chapter for only the following grounds:

(1) immorality;

(2) insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation;

(3) neglect of duty;

(4) incompetency;

(5) justifiable decrease in the number of teaching positions;

(6) a conviction for:

(A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)

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- 1 years of age;
- 2 (B) criminal deviate conduct (IC 35-42-4-2), if the victim is
- 3 less than eighteen (18) years of age;
- 4 (C) child molesting (IC 35-42-4-3);
- 5 (D) child exploitation (IC 35-42-4-4(b));
- 6 (E) vicarious sexual gratification (IC 35-42-4-5);
- 7 (F) child solicitation (IC 35-42-4-6);
- 8 (G) child seduction (IC 35-42-4-7);
- 9 **(H) sexual misconduct with a minor (IC 35-42-4-9); or**
- 10 ~~(H)~~ **(J) incest (IC 35-46-1-3)**, if the victim is less than eighteen
- 11 (18) years of age; or
- 12 (7) other good and just cause.

13 When the cause of cancellation is ground (1), (2), or (6) the  
 14 cancellation is effective immediately. When the cause of cancellation  
 15 is ground (3), (4), (5), or (7), the cancellation is effective at the end of  
 16 the school term following the cancellation.

17 (b) An indefinite contract may not be canceled for political or  
 18 personal reasons.

19 SECTION 5. IC 20-6.1-4-10.5 IS AMENDED TO READ AS  
 20 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10.5. (a) An indefinite  
 21 contract with a semipermanent teacher may be canceled in the manner  
 22 specified in section 11 of this chapter only for the following grounds:

- 23 (1) Immorality.
- 24 (2) Insubordination, which means a willful refusal to obey the
- 25 state school laws or reasonable rules prescribed for the
- 26 government of the school corporation.
- 27 (3) Neglect of duty.
- 28 (4) Substantial inability to perform teaching duties.
- 29 (5) Justifiable decrease in the number of teaching positions.
- 30 (6) Good and just cause.
- 31 (7) The cancellation is in the best interest of the school
- 32 corporation.
- 33 (8) A conviction for:
  - 34 (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)
  - 35 years of age;
  - 36 (B) criminal deviate conduct (IC 35-42-4-2), if the victim is
  - 37 less than eighteen (18) years of age;
  - 38 (C) child molesting (IC 35-42-4-3);
  - 39 (D) child exploitation (IC 35-42-4-4(b));
  - 40 (E) vicarious sexual gratification (IC 35-42-4-5);
  - 41 (F) child solicitation (IC 35-42-4-6);
  - 42 (G) child seduction (IC 35-42-4-7);



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1           **(H) sexual misconduct with a minor (IC 35-42-4-9); or**  
 2           ~~(H)(I)~~ **(I)** incest (IC 35-46-1-3), if the victim is less than eighteen  
 3           (18) years of age.

4           (b) An indefinite contract with a semipermanent teacher may not be  
 5           canceled for political or personal reasons.

6           (c) Before the cancellation of a semipermanent teacher's indefinite  
 7           contract, the principal of the school at which the teacher teaches shall  
 8           provide the teacher with a written evaluation of the teacher's  
 9           performance before January 1 of each year. Upon the request of a  
 10          semipermanent teacher, delivered in writing to the principal within  
 11          thirty (30) days after the teacher receives the evaluation required by  
 12          this section, the principal shall provide the teacher with an additional  
 13          written evaluation.

14          SECTION 6. IC 22-5-5-1 IS AMENDED TO READ AS FOLLOWS  
 15          [EFFECTIVE JULY 1, 2001]: Sec. 1. The employment contract of a  
 16          person who:

- 17           (1) works with children; and
- 18           (2) is convicted of:
  - 19               (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18)
  - 20               years of age;
  - 21               (B) criminal deviate conduct (IC 35-42-4-2), if the victim is
  - 22               less than eighteen (18) years of age;
  - 23               (C) child molesting (IC 35-42-4-3);
  - 24               (D) child exploitation (IC 35-42-4-4(b));
  - 25               (E) vicarious sexual gratification (IC 35-42-4-5);
  - 26               (F) child solicitation (IC 35-42-4-6);
  - 27               (G) child seduction (IC 35-42-4-7);
  - 28               **(H) sexual misconduct with a minor (IC 35-42-4-9); or**
  - 29               ~~(H)(I)~~ **(I)** incest (IC 35-46-1-3), if the victim is less than eighteen
  - 30               (18) years of age;

31          may be canceled by the person's employer.

32          SECTION 7. IC 31-19-9-10 IS AMENDED TO READ AS  
 33          FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. A court shall  
 34          determine that consent to adoption is not required from a parent if:

- 35           (1) the parent is convicted of and incarcerated at the time of the  
 36           filing of a petition for adoption for:
  - 37               (A) murder (IC 35-42-1-1);
  - 38               (B) causing suicide (IC 35-42-1-2);
  - 39               (C) voluntary manslaughter (IC 35-42-1-3);
  - 40               (D) rape (IC 35-42-4-1);
  - 41               (E) criminal deviate conduct (IC 35-42-4-2);
  - 42               (F) child molesting as a Class A or Class B felony



- 1 (IC 35-42-4-3);  
 2 (G) **sexual misconduct with a minor (IC 35-42-4-9)**;  
 3 (H) incest as a Class B felony (IC 35-46-1-3);  
 4 ~~(H)~~ (I) neglect of a dependent as a Class B felony  
 5 (IC 35-46-1-4);  
 6 ~~(H)~~ (J) battery of a child as a Class C felony  
 7 (IC 35-42-2-1(a)(3)); or  
 8 ~~(H)~~ (K) an attempt under IC 35-41-5-1 to commit an offense  
 9 described in clauses (A) through ~~(H)~~; (J);  
 10 (2) the child or the child's sibling, half-blood sibling, or  
 11 step-sibling of the parent's current marriage is the victim of the  
 12 offense; and  
 13 (3) after notice to the parent and a hearing, the court determines  
 14 that dispensing with the parent's consent to adoption is in the  
 15 child's best interests.
- 16 SECTION 8. IC 33-14-1-8 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. A prosecuting  
 18 attorney who charges a person with committing any of the following  
 19 shall inform the person's employer of the charge, unless the prosecuting  
 20 attorney determines that the person charged does not work with  
 21 children:
- 22 (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)  
 23 years of age.
  - 24 (2) Criminal deviate conduct (IC 35-42-4-2), if the victim is less  
 25 than eighteen (18) years of age.
  - 26 (3) Child molesting (IC 35-42-4-3).
  - 27 (4) Child exploitation (IC 35-42-4-4(b)).
  - 28 (5) Vicarious sexual gratification (IC 35-42-4-5).
  - 29 (6) Child solicitation (IC 35-42-4-6).
  - 30 (7) Child seduction (IC 35-42-4-7).
  - 31 (8) **Sexual misconduct with a minor (IC 35-42-4-9).**
  - 32 (9) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)  
 33 years of age.
- 34 SECTION 9. IC 33-19-6-12 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. In each criminal  
 36 action in which:
- 37 (1) a person is found to have committed the offense of:  
 38 (A) murder (IC 35-42-1-1);  
 39 (B) causing suicide (IC 35-42-1-2);  
 40 (C) voluntary manslaughter (IC 35-42-1-3);  
 41 (D) reckless homicide (IC 35-42-1-5);  
 42 (E) battery (IC 35-42-2-1);

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- 1 (F) rape (IC 35-42-4-1);  
 2 (G) criminal deviate conduct (IC 35-42-4-2);  
 3 (H) child molesting (IC 35-42-4-3);  
 4 (I) child exploitation (IC 35-42-4-4);  
 5 (J) vicarious sexual gratification (IC 35-42-4-5);  
 6 (K) child solicitation (IC 35-42-4-6);  
 7 (L) incest (IC 35-46-1-3);  
 8 (M) neglect of a dependent (IC 35-46-1-4);  
 9 (N) child selling (IC 35-46-1-4); ~~or~~  
 10 (O) child seduction (IC 35-42-4-7); **or**  
 11 **(P) sexual misconduct with a minor (IC 35-42-4-9);** and  
 12 (2) the victim of the offense is less than eighteen (18) years of  
 13 age;  
 14 the court shall order the person to pay a child abuse prevention fee of  
 15 one hundred dollars (\$100) to the clerk.  
 16 SECTION 10. IC 34-24-1-1 IS AMENDED TO READ AS  
 17 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The following  
 18 may be seized:  
 19 (1) All vehicles (as defined by IC 35-41-1), if they are used or are  
 20 intended for use by the person or persons in possession of them to  
 21 transport or in any manner to facilitate the transportation of the  
 22 following:  
 23 (A) A controlled substance for the purpose of committing,  
 24 attempting to commit, or conspiring to commit any of the  
 25 following:  
 26 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).  
 27 (ii) Dealing in a schedule I, II, or III controlled substance  
 28 (IC 35-48-4-2).  
 29 (iii) Dealing in a schedule IV controlled substance  
 30 (IC 35-48-4-3).  
 31 (iv) Dealing in a schedule V controlled substance  
 32 (IC 35-48-4-4).  
 33 (v) Dealing in a counterfeit substance (IC 35-48-4-5).  
 34 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).  
 35 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).  
 36 (viii) Dealing in marijuana, hash oil, or hashish  
 37 (IC 35-48-4-10).  
 38 (B) Any stolen (IC 35-43-4-2) or converted property  
 39 (IC 35-43-4-3) if the retail or repurchase value of that property  
 40 is one hundred dollars (\$100) or more.  
 41 (C) Any hazardous waste in violation of IC 13-30-6-6.  
 42 (2) All money, negotiable instruments, securities, weapons,

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communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

- (A) commit, attempt to commit, or conspire to commit;
  - (B) facilitate the commission of; or
  - (C) escape from the commission of;
- murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), ~~or~~ child exploitation (IC 35-42-4-4), **or sexual misconduct with a minor (IC 35-42-4-9).**

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

- (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- (B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly

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permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
- (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a Class A felony, Class B felony, or Class C felony.
- (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 11. IC 35-42-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. A person who:

- (1) knowingly or intentionally kills another human being;
- (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, **sexual misconduct with a minor (IC 35-42-4-9)**, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, or carjacking;
- (3) kills another human being while committing or attempting to commit:

- (A) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
- (B) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (C) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
- (D) dealing in a schedule V controlled substance; or
- (4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365);

commits murder, a felony.

SECTION 12. IC 35-47-4-5, AS AMENDED BY P.L.14-2000, SECTION 76, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) As used in this section, "serious violent

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felon" means a person who has been convicted of:

(1) committing a serious violent felony in:

(A) Indiana; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or

(2) attempting to commit or conspiring to commit a serious violent felony in:

(A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or

(B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

(1) murder (IC 35-42-1-1);

(2) voluntary manslaughter (IC 35-42-1-3);

(3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);

(4) battery as a Class B felony (IC 35-42-2-1(a)(4)) or Class C felony (IC 35-42-2-1(a)(3));

(5) aggravated battery (IC 35-42-2-1.5);

(6) kidnapping (IC 35-42-3-2);

(7) criminal confinement (IC 35-42-3-3);

(8) rape (IC 35-42-4-1);

(9) criminal deviate conduct (IC 35-42-4-2);

(10) child molesting (IC 35-42-4-3);

(11) sexual battery as a Class C felony (IC 35-42-4-8);

(12) **sexual misconduct with a minor (IC 35-42-4-9);**

(13) robbery (IC 35-42-5-1);

~~(13)~~ (14) carjacking (IC 35-42-5-2);

~~(14)~~ (15) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));

~~(15)~~ (16) burglary as a Class A felony or Class B felony (IC 35-43-2-1);

~~(16)~~ (17) assisting a criminal as a Class C felony (IC 35-44-3-2);

~~(17)~~ (18) resisting law enforcement as a Class B felony or Class C felony (IC 35-44-3-3);

~~(18)~~ (19) escape as a Class B felony or Class C felony (IC 35-44-3-5);

~~(19)~~ (20) trafficking with an inmate as a Class C felony (IC 35-44-3-9);

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~~(20)~~ **(21)** criminal gang intimidation (IC 35-45-9-4);  
~~(21)~~ **(22)** stalking as a Class B felony or Class C felony  
 (IC 35-45-10-5);  
~~(22)~~ **(23)** incest (IC 35-46-1-3);  
~~(23)~~ **(24)** dealing in cocaine or a narcotic drug (IC 35-48-4-1);  
~~(24)~~ **(25)** dealing in a schedule I, II, or III controlled substance  
 (IC 35-48-4-2);  
~~(25)~~ **(26)** dealing in a schedule IV controlled substance  
 (IC 35-48-4-3); or  
~~(26)~~ **(27)** dealing in a schedule V controlled substance  
 (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony.

SECTION 13. IC 35-50-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this section, "crime of violence" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) involuntary manslaughter (IC 35-42-1-4);
- (4) reckless homicide (IC 35-42-1-5);
- (5) aggravated battery (IC 35-42-2-1.5);
- (6) kidnapping (IC 35-42-3-2);
- (7) rape (IC 35-42-4-1);
- (8) criminal deviate conduct (IC 35-42-4-2);
- (9) child molesting (IC 35-42-4-3);
- (10) **sexual misconduct with a minor (IC 35-42-4-9);**
- (11)** robbery as a Class A felony or a Class B felony (IC 35-42-5-1);
- ~~(11)~~ **(12)** burglary as a Class A felony or a Class B felony (IC 35-43-2-1); or
- ~~(12)~~ **(13)** causing death when operating a motor vehicle (IC 9-30-5-5).

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the aggravating and mitigating circumstances in IC 35-38-1-7.1(b) and IC 35-38-1-7.1(c) in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences

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are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

- (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or
- (2) while the person is released:

- (A) upon the person's own recognizance; or

- (B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If a court determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

SECTION 14. IC 35-50-2-2, AS AMENDED BY P.L.188-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence:

- (1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.
- (2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.
- (3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the



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person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) **sexual misconduct with a minor (IC 35-42-4-9);**
- (J) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- ~~(K)~~ (K) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- ~~(L)~~ (L) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- ~~(M)~~ (M) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- ~~(N)~~ (N) escape (IC 35-44-3-5) with a deadly weapon;
- ~~(O)~~ (O) rioting (IC 35-45-1-2) with a deadly weapon;
- ~~(P)~~ (P) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a Class A felony;
- ~~(Q)~~ (Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the amount of controlled substance involved has an aggregate weight of three (3) grams or more;
- ~~(R)~~ (R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or
- ~~(S)~~ (S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary

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manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 15. IC 35-50-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) **Sexual misconduct with a minor (IC 35-42-4-9).**

(F) Kidnapping (IC 35-42-3-2).

~~(F)~~ (G) Rape (IC 35-42-4-1).

~~(G)~~ (H) Robbery (IC 35-42-5-1).

~~(H)~~ (I) Carjacking (IC 35-42-5-2).

~~(I)~~ (J) Criminal gang activity (IC 35-45-9-3).

~~(J)~~ (K) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage

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- 1 property.
- 2 (3) The defendant committed the murder by lying in wait.
- 3 (4) The defendant who committed the murder was hired to kill.
- 4 (5) The defendant committed the murder by hiring another person
- 5 to kill.
- 6 (6) The victim of the murder was a corrections employee,
- 7 probation officer, parole officer, community corrections worker,
- 8 home detention officer, fireman, judge, or law enforcement
- 9 officer, and either:
- 10 (A) the victim was acting in the course of duty; or
- 11 (B) the murder was motivated by an act the victim performed
- 12 while acting in the course of duty.
- 13 (7) The defendant has been convicted of another murder.
- 14 (8) The defendant has committed another murder, at any time,
- 15 regardless of whether the defendant has been convicted of that
- 16 other murder.
- 17 (9) The defendant was:
- 18 (A) under the custody of the department of correction;
- 19 (B) under the custody of a county sheriff;
- 20 (C) on probation after receiving a sentence for the commission
- 21 of a felony; or
- 22 (D) on parole;
- 23 at the time the murder was committed.
- 24 (10) The defendant dismembered the victim.
- 25 (11) The defendant burned, mutilated, or tortured the victim while
- 26 the victim was alive.
- 27 (12) The victim of the murder was less than twelve (12) years of
- 28 age.
- 29 (13) The victim was a victim of any of the following offenses for
- 30 which the defendant was convicted:
- 31 (A) Battery as a Class D felony or as a Class C felony under
- 32 IC 35-42-2-1.
- 33 (B) Kidnapping (IC 35-42-3-2).
- 34 (C) Criminal confinement (IC 35-42-3-3).
- 35 (D) A sex crime under IC 35-42-4.
- 36 (14) The victim of the murder was listed by the state or known by
- 37 the defendant to be a witness against the defendant and the
- 38 defendant committed the murder with the intent to prevent the
- 39 person from testifying.
- 40 (15) The defendant committed the murder by intentionally
- 41 discharging a firearm (as defined in IC 35-47-1-5):
- 42 (A) into an inhabited dwelling; or

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- 1 (B) from a vehicle.
- 2 (16) The victim of the murder was pregnant and the murder
- 3 resulted in the intentional killing of a fetus that has attained
- 4 viability (as defined in IC 16-18-2-365).
- 5 (c) The mitigating circumstances that may be considered under this
- 6 section are as follows:
- 7 (1) The defendant has no significant history of prior criminal
- 8 conduct.
- 9 (2) The defendant was under the influence of extreme mental or
- 10 emotional disturbance when the murder was committed.
- 11 (3) The victim was a participant in or consented to the defendant's
- 12 conduct.
- 13 (4) The defendant was an accomplice in a murder committed by
- 14 another person, and the defendant's participation was relatively
- 15 minor.
- 16 (5) The defendant acted under the substantial domination of
- 17 another person.
- 18 (6) The defendant's capacity to appreciate the criminality of the
- 19 defendant's conduct or to conform that conduct to the
- 20 requirements of law was substantially impaired as a result of
- 21 mental disease or defect or of intoxication.
- 22 (7) The defendant was less than eighteen (18) years of age at the
- 23 time the murder was committed.
- 24 (8) Any other circumstances appropriate for consideration.
- 25 (d) If the defendant was convicted of murder in a jury trial, the jury
- 26 shall reconvene for the sentencing hearing. If the trial was to the court,
- 27 or the judgment was entered on a guilty plea, the court alone shall
- 28 conduct the sentencing hearing. The jury or the court may consider all
- 29 the evidence introduced at the trial stage of the proceedings, together
- 30 with new evidence presented at the sentencing hearing. The court shall
- 31 instruct the jury concerning the statutory penalties for murder and any
- 32 other offenses for which the defendant was convicted, the potential for
- 33 consecutive or concurrent sentencing, and the availability of good time
- 34 credit and clemency. The defendant may present any additional
- 35 evidence relevant to:
- 36 (1) the aggravating circumstances alleged; or
- 37 (2) any of the mitigating circumstances listed in subsection (c).
- 38 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
- 39 jury shall recommend to the court whether the death penalty or life
- 40 imprisonment without parole, or neither, should be imposed. The jury
- 41 may recommend:
- 42 (1) the death penalty; or

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(2) life imprisonment without parole; only if it makes the findings described in subsection (k). The court shall make the final determination of the sentence, after considering the jury's recommendation, and the sentence shall be based on the same standards that the jury was required to consider. The court is not bound by the jury's recommendation. In making the final determination of the sentence after receiving the jury's recommendation, the court may receive evidence of the crime's impact on members of the victim's family.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole; only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

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1 (1) conviction or sentence was in violation of the:

2 (A) Constitution of the State of Indiana; or

3 (B) Constitution of the United States;

4 (2) sentencing court was without jurisdiction to impose a  
5 sentence; and

6 (3) sentence:

7 (A) exceeds the maximum sentence authorized by law; or

8 (B) is otherwise erroneous.

9 If the supreme court cannot complete its review by the date set by the  
10 sentencing court for the defendant's execution under subsection (h), the  
11 supreme court shall stay the execution of the death sentence and set a  
12 new date to carry out the defendant's execution.

13 (k) Before a sentence may be imposed under this section, the jury,  
14 in a proceeding under subsection (e), or the court, in a proceeding  
15 under subsection (g), must find that:

16 (1) the state has proved beyond a reasonable doubt that at least  
17 one (1) of the aggravating circumstances listed in subsection (b)  
18 exists; and

19 (2) any mitigating circumstances that exist are outweighed by the  
20 aggravating circumstance or circumstances.

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